

Amendment No. 1 to HB0471

Crawford
Signature of Sponsor

AMEND Senate Bill No. 513*

House Bill No. 471

by deleting all language after the enacting clause and substituting:

SECTION 1. This act is known and may be cited as the "Tennessee Landowner Bill of Rights."

SECTION 2. Tennessee Code Annotated, Title 66, is amended by adding the following as a new chapter:

66-38-101. Findings; purpose and intent.

The general assembly finds that:

- (1) The right to own and use private property is a fundamental right, essential to the continued vitality of a democratic society;
- (2) Governmental regulation of the use and development of property must be carried out in a manner that appropriately balances the needs of the public with the rights and legitimate expectations of the landowner;
- (3) The takings clause of the Fifth Amendment of the United States Constitution and Article I, Section 21 of the Tennessee Constitution both prohibit the taking of private property for public use without just compensation;
- (4) The Tennessee supreme court held in *Phillips v. Montgomery County*, 442 S.W.3d 233 (2014) that article I, section 21 of the Tennessee Constitution should be interpreted in the same manner as the takings clause of the Fifth Amendment of the United States Constitution;
- (5) An individual private property owner should not be required, as a condition of a land use approval or issuance of a development permit of any kind,

to bear the financial burden of public improvements that are not directly related to the development of that specific property;

(6) County and municipal governments in in this state are authorized by state law to enact and amend zoning ordinances by a majority vote. Requiring a supermajority vote for zoning ordinances in counties with a metropolitan form of government for which the planning commission recommends disapproval is inconsistent with how other cities and counties in this state are treated; and

(7) The fair, consistent, and reasonable treatment of landowners regarding the use and development of their property, whether located in a municipality, county, or metropolitan form of government is a matter of statewide concern.

66-38-102. Definitions.

As used in this chapter:

(1) "Approval" means a permit or authorization issued by a metropolitan government for the use or development of property, including, but not limited to, the following:

- (A) A change in land use category or zoning;
- (B) Approval of a site plan or development plan;
- (C) A use and occupancy permit;
- (D) A grading permit;
- (E) A foundation permit;
- (F) A building permit;
- (G) An electrical permit;
- (H) A permit to access a water or sewer utility operated by a metropolitan government; and
- (I) A stormwater permit;

(2) "Essential nexus" means a relationship or connection between a landowner's use or development of their property and a burden that is placed upon a metropolitan government's resources or infrastructure as a result;

(3) "Landowner" means the owner of a parcel of property within this state for which the landowner, or someone in privity of contract with the landowner, is seeking approval from a metropolitan government to use or develop the property;

(4) "Metropolitan government" means a county having a metropolitan form of government; and

(5) "Roughly proportional" means that the amount of the dedication of an interest in real property or required monetary payment to a metropolitan government must be proportional to the development's anticipated impacts on a metropolitan government's services and infrastructure, including, but not limited to, roads, sidewalks, water and sewer infrastructure, and stormwater infrastructure resulting from the proposed use or development of property.

66-38-103. Restrictions on a metropolitan government's approval authority.

(a) In exercising a power related to the approval of the use or development of property, a metropolitan government shall not require a landowner to dedicate a real property interest to the metropolitan government, or to pay money to the metropolitan government in an amount that is determined on an individual and discretionary basis, unless there is an essential nexus between the dedication or payment and a legitimate local governmental interest, and the dedication or payment is roughly proportional both in nature and extent to the impact of the proposed use or development of the property.

(b) If a metropolitan government requires a landowner to dedicate a real property interest or pay money as a condition for approval, the metropolitan government shall, upon the written request of the landowner, provide the landowner a written explanation, within ten (10) days of the request, regarding the essential nexus of the

dedication of property or payment and how it is roughly proportional to the proposed use or development of the property.

(c) If a landowner is not satisfied with the written explanation from a metropolitan government regarding the required dedication or monetary payment, the landowner may seek relief through a common law writ of certiorari in chancery court.

(d) If a landowner prevails against a metropolitan government in such an action, the landowner is entitled to recover damages from the metropolitan government, as well as reasonable attorney fees and court costs. The measure of damages may include, but not be limited to, the following:

(1) The value of the required dedication that does not meet the essential nexus and rough proportionality tests provided in this chapter;

(2) The amount of the monetary payment paid plus interest at the rate of ten percent (10%) per annum;

(3) The value of lost sales due to a delay in approval; and

(4) Reimbursement for increased development and financing costs related to a delay in approval, such as an increase in the costs of materials and financing cost increases.

(e) This section does not apply to a dedication, assessment, fee, or charge that is imposed on a broad class of property owners by a metropolitan government, including lawfully enacted impact fees and adequate facilities taxes.

SECTION 3. Tennessee Code Annotated, Title 7, is amended by adding the following as a new chapter:

7-70-101. Findings; declaration of purpose.

The general assembly finds, determines, and declares that:

(1) This state encourages private economic investment and opportunities throughout the state;

(2) Businesses should have the freedom to choose which philanthropic organizations they want to support;

(3) Requiring or conditioning metropolitan government approvals, explicitly or implicitly, upon a private individual or entity contracting with another non-government entity to provide certain community benefits is a violation of public policy and should be prohibited; and

(4) Prohibiting certain community benefits agreement requirements is a matter of statewide concern, and, therefore, this chapter applies equally to all metropolitan governments and metropolitan government officials.

7-70-102. Definitions.

As used in this chapter:

(1) "Community benefits agreement" means an agreement or understanding of any type between a private entity and an organization that contractually binds the private entity to fund or provide specific attributes, services or amenities, or mitigations, or anything else of value whatsoever to a metropolitan government or organization; that establishes employment criteria of any type or form, including wage and hour criteria; or that provides for or requires the private entity to utilize a trade union or other unionized workforce where the employees collectively bargain with employers for wages, hours, or working conditions;

(2) "Metropolitan government" means a county having a metropolitan form of government;

(3) "Official" means an agent, employee, or an elected or appointed official of a metropolitan government;

(4) "Organization" means a non-governmental entity of any type, including, but not limited to, nonprofit corporations, organizations, clubs, associations, or groups; and

(5) "Private entity" means a private individual, company, developer, business, property owner, or any other non-government entity.

7-70-103. Community benefits agreements prohibited by public policy.

(a) A metropolitan government or official shall not condition a metropolitan government's or official's approval of a contract, legislation, or the issuance of a permit, approval, authorization, or other entitlement of any type upon the private entity being a party to a community benefits agreement.

(b) A metropolitan government or official shall not discriminate against or offer preferential treatment to a private entity based, either implicitly or explicitly, upon the private entity being a party to a community benefits agreement.

SECTION 4. Tennessee Code Annotated, Section 13-4-303, is amended by adding the following as a new subsection:

(e)

(1) Before adoption of subdivision regulations for a metropolitan government or any amendment thereof, the metropolitan planning commission shall hold a public hearing on the regulations or amendment. Notice of the time and place of the public hearing must be published in a newspaper of general circulation within the area of the metropolitan government at least thirty (30) days before the public hearing.

(2) The adoption of new subdivision regulations or an amendment to existing subdivision regulations proposed by a metropolitan planning commission is not effective until approved by an ordinance of the metropolitan council.

(3) All existing metropolitan government subdivision regulations in effect as of the effective date of this act must be ratified by an ordinance of the metropolitan council within one (1) year from the effective date of this act. If the metropolitan council fails to ratify the existing subdivision regulations within one (1) year from the effective date of this act, the subdivision regulations that were in

effect on January 1, 2023, govern the subdivision of land within the area of the metropolitan government until such time as the existing subdivision regulations are so ratified.

SECTION 5. Tennessee Code Annotated, Section 13-4-304, is amended by adding the following as a new subsection:

(e) In deciding whether to approve a subdivision plat within the area of a metropolitan government, the metropolitan planning commission shall base its decision solely upon compliance with the subdivision regulations and the applicable zoning ordinance. The metropolitan planning commission shall not base its decision, in whole or in part, upon the general plan adopted pursuant to § 13-4-202.

SECTION 6. Tennessee Code Annotated, Section 13-3-404, is amended by adding the following new subsection (c):

(c) In deciding whether to approve a subdivision plat within the area of the metropolitan government, the metropolitan planning commission shall base its decision solely upon compliance with the subdivision regulations and the applicable zoning ordinance. The metropolitan planning commission shall not base its decision, in whole or in part, upon the regional plan adopted pursuant to § 13-3-303.

SECTION 7. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 8. This act takes effect upon becoming a law, the public welfare requiring it.